

SERVICE DATE – LATE RELEASE DECEMBER 17, 2001

SURFACE TRANSPORTATION BOARD

STB Finance Docket No. 33388 (Sub-No. 90)

CSX CORPORATION AND CSX TRANSPORTATION, INC.,  
NORFOLK SOUTHERN CORPORATION AND  
NORFOLK SOUTHERN RAILWAY COMPANY  
— CONTROL AND OPERATING LEASES/AGREEMENTS —  
CONRAIL INC. AND CONSOLIDATED RAIL CORPORATION  
(Buffalo Rate Study)

Decision No. 7

Decided: December 14, 2001

This decision addresses the reports and comments filed in the second annual round of our 3-year Buffalo Rate Study proceeding. Our review of the record indicates that CSX and NS rates for rail movements into and out of the Buffalo area have not changed significantly over the past year and, overall, are generally somewhat lower than those rates in effect for comparable movements prior to the June 1, 1999 division of Conrail's assets by CSX and NS, and thus that the CSX/NS/Conrail transaction has not resulted in higher rates for Buffalo-area shippers.

**BACKGROUND**

In a decision served July 23, 1998,<sup>1</sup> we imposed a condition calling for a 3-year study of rail rates in the Buffalo, NY area (the Buffalo Rate Study or the study) following applicants' division of Conrail's assets, which occurred on June 1, 1999 (Split Date). We initiated the study<sup>2</sup>

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<sup>1</sup> CSX Corp. et al. – Control – Conrail Inc. et al., 3 S.T.B. 196 (Decision No. 89), aff'd sub nom. Erie-Niagara Rail Steering Committee v. S.T.B., 247 F.3d 437 (2d Cir. 2001). In that decision, we approved, subject to conditions: (1) the acquisition of control of Conrail Inc. and Consolidated Rail Corporation (collectively, Conrail) by (a) CSX Corporation and CSX Transportation, Inc. (collectively, CSX) and (b) Norfolk Southern Corporation and Norfolk Southern Railway Company (collectively, NS); and (2) the division of Conrail's assets between CSX and NS.

<sup>2</sup> CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 90), Decision (continued...)

to examine linehaul and switching rates for rail movements into and out of the Buffalo area.<sup>3</sup> We required CSX and NS to submit certain information and requested public comments to develop a more complete record. For the initial 6-month review, we required the carriers to provide all interested parties and the Board's staff with the Conrail, CSX, and NS 100% waybill files (subject to a protective order) for rail movements into and out of the Buffalo area for the period beginning June 1, 1997, and ending November 30, 1999.

In Buffalo Rate Study Decision No. 4,<sup>4</sup> we preliminarily concluded that CSX and NS had set out and applied an acceptable methodology for measuring rail linehaul rate trends for movements into and out of the Buffalo area for the period preceding and following their division of Conrail's assets. We also found that CSX and NS had "presented evidence to show that, through the first 6 months following the division of Conrail, those [Buffalo-area] rates have, on average, been reduced."<sup>5</sup> Buffalo Rate Study Decision No. 4, at 8. Finally, we found CSX and NS to be in compliance with all the conditions related to switching that we had imposed in the Buffalo area. Id. at 9.

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<sup>2</sup>(...continued)

No. 1 (STB served Dec. 15, 1999) (Buffalo Rate Study Decision No. 1), 64 FR 71188 (Dec. 20, 1999).

<sup>3</sup> The terms "Buffalo area," "Greater Buffalo area," and "Niagara Frontier region" are used interchangeably here and are defined as "that area including the New York State counties of Erie and Niagara and those parts of Chautauqua County that lie north or east of CP 58 near Westfield." See Decision No. 89 at 285, n.133 and 497, n.505; see also Buffalo Rate Study Decision No. 1, slip op. at 2, n.2.

<sup>4</sup> CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 4 (STB served July 7, 2000).

<sup>5</sup> CSX, which acquired the major share of Conrail's Buffalo-area assets, concluded that its rail linehaul rates for major movements into and out of the Buffalo area that had pre-Split-Date counterparts on Conrail declined, on average, 8.9% over the first 6 post-Split-Date months, when compared to rates for those same movements in the 12 months prior to the Split Date, with rates decreasing on 30% of those movements and increasing on only 7.6% of the movements. Buffalo Rate Study Decision No. 4, slip op. at 8. NS found that its line haul rates for major movements to and from stations in the Buffalo area since June 1, 1999, were, for the most part, the same or lower than the corresponding Conrail and/or NS rates for those same movements before June 1, 1999, and that no meaningful conclusions could be made for the remaining (non-major) movements. Id. at 3-4.

In the second phase of the study, we required CSX and NS to supplement the data submitted in the earlier phase with 100% waybill data for their respective rail movements originating or terminating in the Buffalo area between December 1, 1999, and May 31, 2000, thus completing data for the first full post-Split-Date year (June 1, 1999, to May 31, 2000). CSX and NS submitted their reports on July 14, 2000, and several Buffalo-area parties filed comments. In addition, the United States Department of Transportation (DOT) filed reply comments. After reviewing the carriers' reports and the comments, we concluded that Buffalo-area rail freight rates, on the whole, had declined relative to rates for comparable movements in the prior year, and that CSX and NS were in compliance with all of the conditions related to switching that we had imposed in the Buffalo area. Buffalo Rate Study Decision No. 6,<sup>6</sup> slip op. at 10-11. In continuing this proceeding for the second full year of the study, we required the carriers to make available their updated (through May 31, 2001) 100% waybill files by June 30, 2001, and provided for parties to file comments and replies.<sup>7</sup>

**NS' Report.** NS' third report (NS-5) describes NS' traffic to and from stations in the Buffalo area for the second full post-Split-Date year (June 1, 2000, to May 31, 2001) and compares the rates for those movements with rates for comparable movements by NS during the first full year following the Split Date. NS states that its third report employs essentially the same methodology as used in its previous Buffalo Rate Study reports to review rate trends reflected in the waybill data submitted by NS to the Board on June 30, 2001. NS' third report indicates that rates for the majority of NS traffic to and from stations in the Buffalo area have either remained constant or declined since June 1, 2000.

In determining the trends in rates over the period of the study, NS indicates that it focused on revenues from "major movements," defined as movements of a particular commodity (using the 4-digit Standard Transportation Commodity Code (STCC) level of detail) between two points

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<sup>6</sup> CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company – Control and Operating Lease/Agreements – Conrail Inc. and Consolidated Rail Corporation, STB Finance Docket No. 33388 (Sub-No. 90), Decision No. 6 (STB served Feb. 2, 2001).

<sup>7</sup> CSX and NS submitted their Buffalo Rate Study reports on August 20, 2001. CSX-6 NS-5. In a letter filed September 24, 2001, DOT advised us that it intended to submit substantive comments after reviewing the comments of other interested parties. DOT filed reply comments on October 12, 2001. On that date, CSX and NS filed separate letters reserving the right to file replies to DOT's submission. CSX and NS responded to the DOT reply comments on October 31, 2001. CSX-7, and NS letter dated October 31, 2001.

DOT has stated that it would not object if the Board provided an opportunity for CSX and NS to respond to the DOT reply comments. To provide for a more complete record, we accept and incorporate into the record the CSX and NS responses.

(e.g., Buffalo and Atlanta) that produced linehaul revenues of more than \$20,000 during the study period June 1, 2000 – May 31, 2001.<sup>8</sup> NS states that there were 294 such major movements and that they accounted for approximately 96% of the total linehaul revenues generated by NS' Buffalo-area traffic for that period.

NS then compared the revenues per ton (or per unit) of each of the major movements performed by NS during the period June 1, 2000, through May 31, 2001 – the second full year following the June 1, 1999 Split Date – with the revenues per ton (or per unit) of comparable NS movements during the first full year following the Split Date.<sup>9</sup> Of these 294 major movements in the second full year following the Split Date, 260 had counterparts in the prior year.

NS' analysis shows that in the second full year following the Split Date, and for traffic with comparable moves in both years, its rates declined or remained steady, in comparison to the first full year after the Split date, for a majority of the traffic that was a part of its major Buffalo-area movements.<sup>10</sup> Moreover, NS states that most of its Buffalo-area traffic experienced relatively little or no change in rates during the first 2 years following the Split Date, with rates increasing or decreasing during that period by less than 10% for about 84% of the total volume of comparable major movement traffic.<sup>11</sup>

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<sup>8</sup> In its previous full-year report, NS had used a "major movements" threshold of \$40,000 per year. NS has now reduced the threshold to \$20,000 to match the amount used by CSX and DOT.

<sup>9</sup> NS states that the NS waybill data in its present study for the first full year following the Split Date are the same as those incorporated in its prior report. For data representing its Buffalo-area operations during the second full year following the Split Date, NS relied upon its Costed Record File for the period June 1, 2000 – March 31, 2001, and its Revenue History File for the period April 1, 2001 – May 31, 2001, because the Costed Record File for these 2 most recent months would not be available until mid-September 2001.

<sup>10</sup> The major movements reported by NS vary widely in terms of traffic volumes. NS states that, while the majority of its major movements experienced rate increases in the second full year following the Split Date when compared to rates in the prior year, these increases were concentrated in the lower volume movements, and that rates declined or remained steady for the majority of its traffic.

<sup>11</sup> NS states that its data did not permit meaningful conclusions to be drawn about rate trends for the approximately 1,000 non-major moves it performed during the second full year following the Split Date. These lower-volume movements accounted for approximately 4% of the total linehaul revenues from NS' Buffalo-area traffic during that period.

**CSX's Report.** To analyze rate trends involving its Buffalo traffic during the second full year of operations, CSX states that it continued to apply the methodology we approved in Buffalo Rate Study Decision No. 4. For waybills with dates between June 1, 2000, and May 31, 2001, CSX identified 1,898 movements by origin/destination pairs at the four-digit STCC level. Of these, 672 yielded revenues of \$20,000 or more and were designated major movements, representing about 96% of CSX's Buffalo-area linehaul revenues, carloads, and tonnage. As in its prior Buffalo Rate Study report, CSX disaggregated the 672 4-digit STCC movements into 859 movements at the 7-digit STCC level to determine the proper pricing basis – per carload, per ton, or per hundredweight – and to match the movements with comparable movements from the previous year. Of the 859 movements, 71% (608 movements) could be matched to comparable CSX movements in the first full year following the Split Date, and these matched movements represented 84% of the revenues generated by the major movements. CSX notes that this is a significant improvement from the first year of this proceeding, when only 39% of CSX's major Buffalo-area movements in the first full year following the Split Date (representing 61% of CSX's revenues from those major movements) could be matched to comparable Conrail movements in the prior year.

Of the 608 7-digit STCC movements that had comparable CSX movements in the previous year, CSX's preliminary analysis shows an overall weighted-average rate increase, from the first to the second post-Split-Date year, of 1.7%.<sup>12</sup> A more detailed breakdown of this preliminary analysis indicates that 22% (136) of the 608 7-digit STCC movements had second year rate reductions of at least 2% (including 61 movements (10%) exhibiting reductions of at least 8%), and 38% (234) had rate increases of at least 2% (including 83 movements (14%) exhibiting increases of at least 8%).

As in its prior submissions in this proceeding, CSX conducted additional analyses of those 144 movements where the waybill data suggested second year rate increases or decreases of 8% or more. Because the use of waybill revenues as a surrogate for rates can result in distortions, CSX sought input from its marketing managers to determine whether the revenues in the waybill data reflected actual changes in the rates charged on those movements.

CSX found a number of factors that led to misleading or inaccurate rate change estimates derived from its waybill data. Most notably, CSX found significant apparent increases in rates

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<sup>12</sup> CSX states that the rates derived from its waybill data only show revenues for transportation services, and thus do not incorporate its fuel cost recovery surcharges. CSX states that the fuel cost surcharges were tied directly to the price of petroleum, were applied across-the-board on all CSX system-wide operations, and were separately accounted for in CSX's financial records. CSX notes that, in Buffalo Rate Study Decision No. 4, at 5, we stated that the purpose of this study is to determine rate changes attributable to the CSX/NS/Conrail transaction, and not changes resulting from increased prices of fuel that are beyond the railroad's control.

derived from waybill revenues for certain joint-line movements of automobiles and automobile parts where no rate change had been experienced by the shippers. The apparent rate increases were the result of inappropriate comparisons of rates derived from the revenues of all carriers participating in the movement to waybill revenues in the prior year that represented only CSX's share of the movement. CSX found other instances where waybill revenues for certain chemical movements incorrectly reflected a tariff rate rather than the (lower) applicable contract rate.

Using information from interviews with its marketing managers, CSX then adjusted its calculated percentage rate changes in those instances where there was a clearly inappropriate comparison. These adjustments resulted in a revised overall weighted-average second-year rate increase of 0.9% for the 608 7-digit STCC movements that had a comparable CSX movement in the prior year.

CSX states that its study shows that it has maintained the low rate levels on Buffalo-area traffic that it established during its first year of operating the former Conrail assets. CSX emphasizes that where rates have increased, the increases are consistent with its system-wide pricing strategy and do not represent any adverse treatment of Buffalo-area customers. Rather, CSX maintains the rate increases reflect cost increases, inflation, shifting shipping patterns, and the overall level of economic activity.<sup>13</sup>

CSX contends that, in light of current market conditions, an overall weighted-average rate increase of only 0.9% for Buffalo-area traffic, following a year in which its Buffalo-area rates declined (relative to those charged by Conrail prior to the Split Date), demonstrates that the Buffalo area has not been adversely affected by the Conrail transaction, and that Buffalo shippers have not been disadvantaged vis-a-vis other CSX shippers.

**Comments of United States Department of Transportation.** To assess the general trend in rail rates for the Buffalo area, DOT employed the same analytical approach used by CSX and NS here and in the prior phases of this proceeding. Using the waybill data submitted by CSX and NS, DOT extracted data for major movements (identified as having generated revenues greater than or equal to \$20,000) grouped by origin-city/destination-city pairs and by commodity identified at the 4-digit STCC level. To be considered, traffic had to have a corresponding move in the preceding period under examination. DOT examined rates in three separate 12-month periods to assess the transaction's total effects on Buffalo-area rail rates: the second 12-month period following the Split Date; the 12-month period immediately following the Split Date; and

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<sup>13</sup> CSX indicates that, over the past 2 years, it has taken across-the-board increases on virtually all of its common carriage rates and has negotiated higher contract rates with many of its customers. CSX asserts that most of the nation's railroads, facing higher fuel and labor costs, are raising rates more aggressively than in previous years. CSX states that significant improvements in transit times and on-time deliveries make such increases possible.

the 12-month period immediately preceding the Split Date. DOT used changes in waybill revenue per car from one period to another as its surrogate for rate changes. DOT did not adjust any data to reflect inflation or changes in the railroads' costs of providing service.

DOT states that its analysis, which does not take inflation into account, shows that CSX's rates in the Buffalo area have generally decreased from the pre- to the post-Split-Date periods, while NS' rates have increased slightly. DOT concludes that CSX's rates remained fairly static in the most recent 12-month period while NS' rates rose somewhat, but that overall, the rail rates in this region have not changed significantly since June 1, 1999.

**NS' and CSX's Responses to DOT.** NS agrees with DOT's ultimate conclusion that "rail rates in [the Buffalo area] have not changed significantly" since June 1, 1999.<sup>14</sup> CSX states that DOT's analysis confirms the conclusions in the NS and CSX reports that rail rates in the Buffalo area did not change significantly in the second post-Split-Date year and are generally the same or lower than pre-transaction rates. CSX also states that DOT's adoption of the general methodology used by CSX and NS to measure Buffalo-area rate trends<sup>15</sup> validates the railroads' approach and reinforces our conclusion that the parties have used an appropriate methodology for analyzing rate changes from one year to the next.

## **DISCUSSION AND CONCLUSIONS**

CSX, NS, and DOT have appropriately applied what we have found to be a reasonable methodology, using CSX and NS rail waybill data to measure rate changes for rail movements into and out of the Buffalo area. The analyses conducted by NS, CSX, and DOT all use the same type of data and general methodology to compare rates for rail movements into and out of the Buffalo area during June 2000-May 2001 to rates for comparable movements during June 1999-May 2000. DOT also analyzed rate changes since June 1, 1998. Moreover, all of the parties used the same criterion to identify major movements (i.e., movements generating revenues greater than or equal to \$20,000) in the most recent study period, and they compare rates for these movements to rates for comparable movements in the previous period(s).

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<sup>14</sup> NS notes that certain of DOT's specific conclusions with respect to NS' rates differ somewhat from those in NS' third report, and suggests that this might be due to certain methodological differences.

<sup>15</sup> CSX notes that DOT adopted a simplifying approach that estimated rates for all movements on a per-carload basis, rather than on the more exact pricing basis (per ton, per car, or per hundredweight) used by CSX. And, unlike the 7-digit STCC analyses used by CSX to ascertain more accurately the proper pricing basis of specific movements, DOT (and NS) disaggregated movements to the 4-digit STCC level.

As with last year's submissions, there are slight differences in data and methodology. Most notably, DOT has used revenue per car as its proxy for rates, while NS has made its comparisons on either a per carload or per ton basis, and CSX has made its comparisons on a per car, per ton, or per hundredweight basis. In another small difference in approaches, both NS and DOT have assessed rate changes for rail movements at the 4-digit STCC level, while CSX has assessed rate changes at the 7-digit STCC level. The CSX waybill data used by CSX and DOT do not include any revenues associated with its diesel fuel surcharges.<sup>16</sup> There also appear to be slight differences among the parties in their methods for identifying origins and destinations. Finally, CSX has devoted considerable effort to investigating and correcting data imperfections.

The parties' analyses, while differing slightly in approach and in numeric results, all show that CSX and NS rates for rail movements into and out of the Buffalo area have not changed significantly over the past year. This record also supports a finding that, overall, and with no adjustment for inflation, Buffalo-area rail rates continue to be, on average, somewhat lower than those rates in effect for comparable movements prior to the June 1, 1999 division of Conrail's assets by CSX and NS.<sup>17</sup> No party on this record has submitted evidence or argument to the contrary. Thus, we again conclude that the CSX/NS/Conrail transaction has not resulted in higher rates for Buffalo-area shippers.

This decision completes the second annual round of our 3-year Buffalo Rate Study proceeding.

**Continuation of the Buffalo Rate Study Proceeding.** The third and final round of our 3-year Buffalo Rate Study proceeding will be conducted in mid-2002, in accordance with the schedule indicated in the ordering paragraphs below. We anticipate that, following a review of the reports, comments, and replies filed in 2002, we will issue a decision concluding this proceeding. We reserve the right, however, to alter the filing schedule and/or modify the reporting requirements, if and to the extent circumstances warrant.

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<sup>16</sup> We find this omission to be appropriate. As we have previously explained, "our Buffalo Rate Study is not intended to focus on whether the rapid and significant rise in diesel fuel prices, or any other adverse industry-wide cost trends, are eventually reflected in rail rates." Buffalo Rate Study Decision No. 4, at 5.

<sup>17</sup> CSX and NS have both found their rates to be generally lower than those in effect for comparable movements prior to the Split Date. DOT separately has found CSX's rates to be lower and NS' rates to be slightly higher, and we note that a weighted average of DOT's results shows that, overall, Buffalo-area rail rates for comparable major movements have been reduced, on average, since the Split Date.



This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The 3-year Buffalo Rate Study proceeding will continue in accordance with the following schedule: updates of the carriers' rail 100% waybill files for rail movements into and out of the Buffalo area for the period ending May 31, 2002, should be made available, subject to the protective order in this proceeding, to all interested parties, and to Board staff by July 8, 2002; CSX and NS comprehensive filings, incorporating the final year's analysis as well as a full overview of this proceeding, are due by August 19, 2002; comments from other parties are due by September 23, 2002; and CSX and NS replies to comments are due by October 11, 2002.

2. This decision is effective on the date of service.

By the Board, Chairman Morgan, Vice Chairman Clyburn, and Commissioner Burkes.

Vernon A. Williams  
Secretary